IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.10725 OF 1997 AND WRIT PETITION NO. 4787 OF 1998

P. Sundarasividu,
4/D, K.G. Nair Street,
Dhanalakshmi Colony, Vadapalani,
Chennai 600 026. .. Petitioner in both WPs

-Vs-

1. Central Bank of India,
rep. by its Zonal Manager,
48/49, Montieth Road,
Chennai 600 008.

2. Central Bank of India,
rep. by its Asst. General Manager,
(Disciplinary Authority)
48/49, Montieth Road,
Chennai 600 008. .. Respondents in both WPs

3. S. Ramdas,
Senior Manager (Enquiry Officer),
Central Bank of India,
Stock Exchange Building,
2nd Line Beach, Chennai 1. .. 3rd respondent in WP.No.4787/1998

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus and Writ of Certiorari respectively as stated therein.

For Petitioner : Mr.N.G.R. Prasad
for M/s. Row & Reddy

For Respondents : Mr.V. Karthik for
M/s.T.S. Gopalan & Co.

:J U D G M E N T

Parties and the factual position in both the writ petitions being same and both the writ petitions being otherwise inter-linked, shall be governed by the present decision.

2. The petitioner joined services under the Central Bank of India on 3.3.1958 in clerical cadre and in course of time he was promoted to the post of Scale-II officer and holding the office as Branch Manager. On 11.11.1996, the petitioner was transferred from Mandavalli Branch to Big Kancheepuram Branch and such order was served on him on 23 .11.1996. On 26.11.1996, he applied for sick leave for a period of about two months with effect from 23.11.1996. However, in December 1 9 96, a memo was issued to the petitioner for unauthorised absence. It appears that in early part of January 1997 a report was submitted by the Special Inspection team that some of the loan transactions sanctioned by the petitioner while he was the Branch Manager of Mandavalli branch were improper. On 20.1.1997, the petitioner applied for Voluntary Retirement and requested to waive the notice period of three months. On 22.1.1997, punishment of censure was imposed on the petitioner on account of his absence. On the said date the petitioner's application for voluntary retirement was also forwarded by the Regional Manager to the Zonal Manager. The action of the petitioner in not joining at the place of posting was also brought to the notice and an endorsement was made that disciplinary action should be taken against the petitioner. The petitioner subsequently after the expiry of three months period, filed W.P.No.10725 of 1997 for issuing writ of Mandamus directing the respondents to release the terminal benefits on the ground that the petitioner was deemed to have voluntarily retired from service with effect from 21.4.1997, on expiry of three months period as per Clause 29 of the Central Bank of India (employee's) Pension Regulation, 1995. While the aforesaid writ petition was pending, charge memo dated 18.11.1997 was issued to the petitioner relating to the alleged impropriety in the loan transactions in Mandavalli branch and also relating to subsequent absence of the petitioner. W.P.No.4787/98 has been filed by the petitioner for quashing the charge memo mainly on the ground that since the petitioner was deemed to have been retired from the service with effect from 21.4.1987, there was no jurisdiction to initiate a subsequent disciplinary proceeding. The subsequent departmental proceeding continued during pendency of the latter writ petition without prejudice to the contentions of both the parties as per the interim order of the High Court.

3. A contention has been raised at the time of the hearing that since subsistence allowance has not been paid, the subsequent disciplinary proceedings has become vulnerable.

4. In the above factual background, if the contention of the petitioner in W.P.No.10725 of 1997 is accepted, the subsequent charge memo would automatically fall to the ground. It is therefore essential to notice the contentions raised in W.P.No.10725 of 1997.

5. Counter affidavits have been filed in both the writ petitions refuting the contentions raised by the petitioner. It would be more appropriate to deal with the contentions raised in the counter affidavit along with the contentions raised by the petitioner.

6. The main contention in W.P.No.10725 of 1997 is to the effect that the petitioner had given notice dated 21.1.1997 seeking voluntary retirement by requesting to waive the notice period of three months. It is

the contention of the petitioner that since no reply had been issued to the petitioner rejecting his notice for voluntary retirement on expiry of the stipulation period of 3 months,it should be deemed that the petitioner has retired from the service.

7. At this stage, it is necessary to notice the relevant provisions contained in the Regulations. Chapter V of the Regulations relates to pension. The relevant regulations are extracted hereunder :-

29. Pension on Voluntary Retirement.-

(1) . . .

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.
. . .

8. Relying upon the aforesaid provisions, it is the contention of the petitioner that since the appointing authority has not refused to grant permission for retirement before the expiry of the notice period, it must be taken that the petitioner had retired with effective from 21.4.1997, when three months notice period expired.

9. Counter affidavit filed on behalf of the respondents on this aspect is to the following effect :-

 . . . While so, on 20-1-97 the petitioner submitted through the Regional Manager, Chennai an application for voluntary retirement under the Pension Regulations. On 8-2-97 the Regional Manager, Chennai forwarded the petitioner's application for voluntary retirement to the Zonal Manager. On the covering letter of the Regional Manager, the Zonal Manager gave direction that departmental action against the petitioner shall be taken before completion of 3 months notice period and that the petitioner shall not be allowed to retire till completion of the departmental action. By a letter dated 18-2-97, the Asst. General Manager informed the Regional Manager about the decision of the Zonal Manager and instructed him to advise the petitioner about the non-acceptance of his application for voluntary retirement. Accordingly by his letter dated 21-2-97, the Regional Manager informed the petitioner that his application dated 20-1-97 seeking voluntary retirement has not been considered by the higher authorities since it was decided to proceed against him departmentally under Major Penalty proceedings for the irregular Temporary Overdrafts and advances given by him at Mandaveli Branch. As the irregularities committed by the petitioner in the Mandaveli Branch involved vigilance angle, by the letter dated 28-2-97, the Chief Vigilance Officer, Central Office, was also apprised of the same.

It has been further stated :-

 . . . The petitioner was aware that his application for voluntary retirement had not been accepted by the Appointing Authority and that he was continuing in service even after the expiry of 3 months notice from the date of application. It was in that context, he had applied for leave even on 15-4-97. t is submitted that the petitioner continues to be in service of the Respondent and he is liable to face disciplinary action which has already been initiated against him.

10. In the above background, it has been contended by the respondents that since notice for retirement had not been accepted and it has been decided to start departmental proceedings, the petitioner cannot avail of the benefit under Regulation 29.

11. At the time of hearing of the writ petitions, relevant files have been produced.

12. Since the respondents has placed strong reliance upon the endorsement made by the authorities on the covering letter dated 8/10 -2-19 97, it is necessary to quote the aforesaid letter along with the endorsement.

 . . . Further to our cited letter, we like to inform you that the member is not attending office. He has submitted letter dt.26.11 .96 marked duplicate received from him by the branch on 20.1.97 (as already reported to you) seeking leave upto 21.1.97 from 23.11.96. In view of his non-submission of MCs in support of his leave letter, branch is keeping his salary for the said period in Sundry creditors only.

The transfer order issued to him by Zonal Office has not been served to him; the same has been received by the member and kept in his drawer, and he has proceeded on leave, without receiving the same officially.
VRS application submitted by him is being forwarded to you separately with necessary details.

This is for your information and instructions if any
Sd/-
REGIONAL MANAGER

AGM/DGM
Sir, for information please

AGM
Sir, We have to deal with it strictly as per rules

CM (PRS)
I agree with AGM. What happened to chargesheeting the member for serious irregularities in borrowal ?
Pl. ensure that departmental action is taken before 3 months notice period for VRS is over & he is not allowed to retire till departmental action

is over
(Signature)
18/2/97 (Emphasis added)

13. A careful perusal of the aforesaid letter would clearly show that the endorsement does not indicate in so many words that the application for voluntary retirement had been rejected. The endorsement only contains an advice to the effect that departmental action should be taken before expiry of 3 months notice period and the person should not be allowed to retire till the departmental action is over.

14. On the other hand expression "VRS application submitted by him is being forwarded to you separately with necessary details" as contained in the penultimate paragraph of the said letter clearly indicates that VRS application has been forwarded separately. In other words, the endorsement is not on the VRS application, but is on another letter seeking advice in the matter as the petitioner had not joined and had remained absent. A copy of the VRS application along with recommendation are also available in the file, but no orders have been made on such application or in any of the connected papers. It is thus obvious that no specific decision has been taken by the appropriate authority to reject the application for voluntary retirement though the connected papers indicate that the appropriate authority contemplated that departmental proceedings may be started and the person should not be allowed to retire till departmental proceedings is over. Such suggestion, contained in the letter, does not have the effect of rejecting the VRS application, which was sent separately and was not dealt with at all.

15. Even the communication sent to the petitioner does not categorically indicate that the application for voluntary retirement has been rejected. The communication dated 21.2.1997 is to the following effect :-

" . . . Please be informed that your application dt.20.1.97 seeking Voluntary Retirement under Pension Scheme has not been considered by our higher authorities, since it has been decided to proceed against you departmentally under major penalty proc ngs for advances given by you at Mandaveli. . . ."

16. A perusal of the aforesaid communication indicates that the application has not been considered. It does not indicates that the application had been rejected. A perusal of the communication rather would go to show that consideration of the application had been postponed. In view of the above materials, there is no escape from the conclusion that the notice to seek voluntary retirement became effective with effect from 21.4.1997.

17. A contention was raised in the counter and reiterated at the time of hearing to the effect that the petitioner himself was aware that his application for voluntary retirement has been rejected and that is why he had applied for extension of leave. The aforesaid application dated 15.4.1997 praying for extension of leave, which has been subsequently produced by the respondents would show that admittedly by then three months period had not elapsed and therefore the petitioner was deemed to be in service by then.

Seeking for extension of leave at that stage does not give rise to the conclusion that the petitioner was aware that his application for voluntary retirement was already rejected.

18. From the aforesaid analysis on consideration of the relevant documents on record, it is apparent that the application seeking voluntary retirement had not been rejected by the appropriate authority and on expiry of 3 months period it should be deemed that the petitioner has retired from the service. In such view of the matter, W.P.No.10 725 of 1997 is to be allowed and a direction is to be issued to the bank authorities to settle the terminal benefits. While settling the terminal benefits, the period of absence of the petitioner after the order of transfer may be treated as leave with pay or without pay, as the case may be, as admissible under the Rules.

19. Since it would be deemed that the petitioner has retired from the service, the subsequent initiation of departmental proceedings must be taken to be invalid and it is hereby quashed.

20. In the result, both the writ petitions are allowed. No costs.

Index : Yes
Internet : Yes
dpk

To

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rep. by its Zonal Manager,
48/49, Montieth Road,
Chennai 600 008.

2. Central Bank of India,
rep. by its Asst. General Manager,
(Disciplinary Authority)
48/49, Montieth Road,
Chennai 600 008.

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